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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
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10/075,970

02/14/2002

Michael Helmus

01-202

9278

27774 7590 09/11/2009

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EXAMINER

TYSON, MELANIE RUANO

ART UNIT

PAPER NUMBER

3773

MAIL DATE

DELIVERY MODE

09/11/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|   |                                      |  |  |
|---|--------------------------------------|--|--|
| <b>Advisory Action</b><br><b>Before the Filing of an Appeal Brief</b> | <b>Application No.</b><br>10/075,970 | <b>Applicant(s)</b><br>HELMUS, MICHAEL |  |
|   | <b>Examiner</b><br>MELANIE TYSON     | <b>Art Unit</b><br>3773                |  |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 01 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1,3,5-7,9-21 and 46-50.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/(Jackie) Tan-Uyen T. Ho/  
 Supervisory Patent Examiner, Art Unit 3773

/Melanie Tyson/  
 Examiner, Art Unit 3773

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's arguments are not persuasive. The applicant first argues that Hoganson fails to disclose any covering of the inner core of a stent which results in complete coverage of the inner core as required by the present invention. However, the cross-sectional view of the device as shown in Figure 2c depicts the covering 22 disposed on the inside and outside surfaces of the inner core material (see also paragraph 78 for description of Figure 2c). Figure 6a shows the disclosed covering 22 may extend to the ends of the inner core material (see also paragraph 85 for description of Figure 6a). Therefore, it is the examiner's position that an inner core material having a covering on the inside and outside surfaces extending to its ends is considered completely covered and satisfies the language recited in the claims. The applicant then argues that since the covering starts off as being flexible it would have no impact on the inner core material whatsoever. However, it is first noted that although the covering is sufficiently flexible to allow the inner core material to be expanded and deployed, the device itself (of Hoganson as modified by Bolz) would become decreasingly rigid as the covering and inner core material degrade over time as recited in the claims. Secondly, the covering would initially prevent the inner core material from contacting bodily fluids, thus delaying the degradation process of the inner core material. Therefore, it is the examiner's position that that the covering material substantially controls the rate at which the inner core material becomes flexible upon contact with bodily fluids as recited in the claims. Regarding the applicant's argument that Bolz is not combinable with Hoganson since Bolz doesn't teach a coating, it is the examiner's position that combination is still proper since Bolz does not teach away from using a coating or covering. Regarding the applicant's argument that Bolz fails to disclose the use of any polymer coating or covering, it is the examiner's position that Hoganson discloses a polymer coating or covering and to select known equivalent materials is within the general skill of a worker. Regarding the applicant's argument that Hoganson fails to disclose the inner core material is a monofilament core or multi-filament core comprising woven or braided filaments, the applicant discloses in the specification that that the inner core material may be a monofilament core or multi-filament core comprising woven or braided filaments or wires, an interconnected network of articulable segments, or a laser-cut or micromachined tube or coiled structure (as disclosed by Hoganson in paragraph 66), thus indicating such structures are all obvious variations. Since a skilled worker in the art could substitute the structure disclosed by Hoganson with well known woven or braided monofilaments or multi-filaments to meet the claimed invention and the applicant has not provided any benefit of the claimed structures, such a modification would be an obvious matter of design choice.